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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION
17

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 SHENG THAO, ANDRE JONES, DAVID
TRUNG DUONG, and ANDY HUNG
22 DUONG,

23 Defendants.
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Case No. 4:25-CR-00003-YGR

**RESPONSE TO UNITED STATES'
NOTICE OF ERRATA IN
OPPOSITION TO DAVID DUONG'S
MOTION TO MODIFY FILTER TEAM
PROTOCOL**

Hearing Date: April 24, 2025
Hearing Time: 10:30 am
Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1, 4th Floor

1 On April 10, 2025, the government filed an errata stating that it meant to cite *In re Sealed*
2 *Search Warrant and Application for a Warrant ...*, 11 F. 4th 1235, 1249 (11th Cir. 2021), not
3 *United States v. Jarman*, 847 F.3d 259 (5th Cir. 2017), for the proposition that the “[t]he Second,
4 Third, Fourth, Seventh, Eighth, Ninth and Tenth Circuits, in at least some cases, have also either
5 approved of or recognized and declined to criticize the use of government filter teams to
6 screen materials for privilege before items are released to the investigators in the case.” ECF 62
7 at 2.

8 A review of the opinion demonstrates that the 11th Circuit endorses the proposed relief
9 that Mr. Duong seeks. In *In re Sealed Search Warrant*, the Magistrate Judge modified the
10 government’s filter protocol in a way that eliminated the “no oversight” provision – by having the
11 privilege holders, not the filter team, conduct the initial review of the relevant material. *Id.* at
12 1243. The District Court approved. *Id.* at 1244. The privilege holders—not the government—
13 appealed because they sought a preliminary injunction to prohibit the filter team from reviewing
14 any documents the privilege holders had identified as privileged. *Id.* at 1248. The Eleventh
15 Circuit affirmed, in part, because the Magistrate Judge designed the Modified Filter-Team
16 Protocol so that “the filter team cannot inadvertently provide the investigation team with any
17 privileged materials.” *Id.* at 1249.

18 DATED: April 11, 2025

Respectfully Submitted,

JONES DAY

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20 /s/ Neal J. Stephens
21 NEAL J. STEPHENS
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THAO DONNELLY

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25 /s/ Edward w. Swanson
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26 AUGUST P. GUGELMANN

27 Attorneys for Defendant
David Trung Duong
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CERTIFICATE OF SERVICE

I, Trudy Carney, declare:

I am a citizen of the United States and employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Silicon Valley Office, 1755 Embarcadero Road, Palo Alto, California 94303. On April 11, 2025, I served a copy of the Response to Notice United States' Notice of Errata in Opposition to David Duong's Motion to Modify Filter Team Protocol by electronic transmission.

I am familiar with the USDC Northern District's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the Court. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities.

Executed on April 11, 2025, Palo Alto, California.


Trudy Carney

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